

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DIXON UNIFIED SCHOOL DISTRICT,
DIXON MONTESSORI CHARTER
SCHOOL, & FAIRFIELD SUISUN
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013090674

ORDER GRANTING FAIRFIELD
SUISUN UNIFIED SCHOOL
DISTRICT’S MOTION TO DISMISS

On September 20, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Dixon Unified School District (DUSD), Dixon Montessori Charter School, and Fairfield Suisun Unified School District (FSUSD).¹ On October 17, 2013, FSUSD filed a motion to dismiss it as a party, asserting that it is not a responsible public agency regarding Student’s independent educational evaluation (IEE) request as DUSD is the responsible agency. No other party filed a response. Additional information is required before a ruling may be made on the pleadings. On October 24, 2013, OAH issued an order requesting additional information regarding whether Dr. Christine Meade has observed Student in the FSUSD program. On October 29, 2013, the parties provided the requested information.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free

¹ Solano County Special Education Local Plan Area was dismissed as a party on October 22, 2013.

appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) Mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) However, a case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.)

DISCUSSION

In the present matter, FSUSD contends that it should be dismissed as a party because it is not a responsible public agency regarding Student’s IEE request because Student merely attends a regional program operated by FSUSD.

Student’s September 20, 2013 complaint alleges that FSUSD prevented Dr. Meade from observing Student in the FSUSD regional program. The parties do not dispute that Student resides within the boundaries of DUSD and that DUSD is the responsible public agency regarding the denial Parent’s choice for a private assessor. Student’s only allegation against FSUSD is that it did not permit Dr. Meade to observe Student in the FSUSD regional program. However, the requested information provided by the parties established that Parent on September 19, 2013, requested that Dr. Mead observe Student on September 25, 2013, and that this observation, and a subsequent observation, occurred. Student’s complaint does not contain any allegations how the purported delay in observing Student denied him a FAPE, nor any specific allegations that FSUSD’s regional program denied him a FAPE. Accordingly, Student’s complaint does not contain any live controversy or allegations that FSUSD denied Student a FAPE.

ORDER

FSUSD's Motion to Dismiss is granted. FSUSD is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining parties.

Dated: November 1, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings